

114TH CONGRESS
2D SESSION

S. 3013

To authorize and implement the water rights compact among the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, the State of Montana, and the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 26, 2016

Mr. TESTER introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To authorize and implement the water rights compact among the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, the State of Montana, and the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Salish and Kootenai
5 Water Rights Settlement Act of 2016”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

1 (1) to achieve a fair, equitable, and final settle-
 2 ment of claims to water rights in the State of Mon-
 3 tana for—

4 (A) the Confederated Salish and Kootenai
 5 Tribes of the Flathead Indian Reservation; and

6 (B) the United States, for the benefit of
 7 the Tribes and allottees;

8 (2) to authorize, ratify, confirm, and provide
 9 funding for the Compact, to the extent that the
 10 Compact is consistent with this Act;

11 (3) to authorize and direct the Secretary of the
 12 Interior—

13 (A) to execute the Compact; and

14 (B) to take any other action necessary to
 15 carry out the Compact in accordance with this
 16 Act; and

17 (4) to authorize funds necessary for the imple-
 18 mentation of the Compact and this Act.

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) **AGRICULTURE DEVELOPMENT ACCOUNT.**—

22 The term “Agriculture Development Account”
 23 means the Selis-Qlispe Ksanka Agriculture Develop-
 24 ment Account established under section 9(b)(1).

1 (2) ALLOTTEE.—The term “allottee” means an
2 individual who holds a beneficial real property inter-
3 est in Indian land that is—

4 (A) located within the Reservation; and

5 (B) held in trust by the United States.

6 (3) COMMISSIONER.—The term “Commis-
7 sioner” means the Commissioner of Reclamation.

8 (4) COMMUNITY DEVELOPMENT ACCOUNT.—
9 The term “Community Development Account”
10 means the Selis-Qlispe Ksanka Community Develop-
11 ment Account established under section 9(b)(3).

12 (5) COMPACT.—

13 (A) IN GENERAL.—The term “Compact”
14 means the water rights settlement entered into
15 by the Tribes, the State, and the United States,
16 as contained in part 19 of chapter 20 of title
17 85, Montana Code Annotated (2015).

18 (B) INCLUSIONS.—The term “Compact”
19 includes any appendix, exhibit, or amendment
20 (including any amendment to an appendix or
21 exhibit) to the Compact that is executed in ac-
22 cordance with this Act.

23 (6) COMPACT FUND.—The term “Compact
24 Fund” means the Salish and Kootenai Compact
25 Fund established by section 10(a).

1 (7) COMPACT IMPLEMENTATION ACCOUNT.—

2 The term “Compact Implementation Account”
3 means the Compact Implementation Account estab-
4 lished under section 10(b)(1).

5 (8) ECONOMIC DEVELOPMENT ACCOUNT.—The
6 term “Economic Development Account” means the
7 Selis-Qlispe Ksanka Economic Development Account
8 established under section 9(b)(2).

9 (9) ENFORCEABILITY DATE.—The term “en-
10 forceability date” means the date described in sec-
11 tion 12(b).

12 (10) FLATHEAD INDIAN IRRIGATION
13 PROJECT.—

14 (A) IN GENERAL.—The term “Flathead
15 Indian irrigation project” means the irrigation
16 project developed by the United States to irri-
17 gate land within the Reservation pursuant to—

18 (i) the Act of April 23, 1904 (33 Stat.
19 302, chapter 1495); and

20 (ii) the Act of May 29, 1908 (35 Stat.
21 444, chapter 216).

22 (B) INCLUSIONS.—The term “Flathead In-
23 dian irrigation project” includes—

24 (i) all land and any reservoir, ease-
25 ment, right-of-way, canal, ditch, lateral,

and any other facility of the Flathead Indian irrigation project (whether located on or off the Reservation); and

(ii) any headgate, pipeline, pump, building, heavy equipment, vehicle, supplies, record, copy of a record, and any other physical, tangible object (whether of real or personal property) used in the management and operation of the Flathead Indian irrigation project.

(11) FLATHEAD INDIAN IRRIGATION PROJECT ACCOUNT.—The term “Flathead Indian Irrigation Project Account” means the Flathead Indian Irrigation Project Account established under section 10(b)(2).

(12) HUNGRY HORSE DAM.—The term “Hungry Horse Dam” means the dam that is a part of the Hungry Horse Project.

(13) HUNGRY HORSE PROJECT.—The term “Hungry Horse Project” means that project authorized to be carried out by the Secretary under the Act of June 5, 1944 (58 Stat. 270, chapter 234; 43 U.S.C. 593a et seq.).

1 (14) HUNGRY HORSE RESERVOIR.—The term
2 “Hungry Horse Reservoir” means the reservoir that
3 is a part of the Hungry Horse Project.

4 (15) INDIAN LAND.—The term “Indian land”
5 means land owned by an Indian tribe or a member
6 of an Indian tribe.

7 (16) INDIAN TRIBE.—The term “Indian tribe”
8 has the meaning given the term in section 4 of the
9 Indian Self-Determination and Education Assistance
10 Act (25 U.S.C. 450b).

11 (17) LAW OF ADMINISTRATION.—The term
12 “law of administration” means the Unitary Adminis-
13 tration and Management Ordinance described in the
14 Compact.

15 (18) RESERVATION.—

16 (A) IN GENERAL.—The term “Reserva-
17 tion” means all land within the exterior bound-
18 aries of the Indian reservation established
19 under the Treaty between the United States
20 and the Flathead, Kootenay, and Upper Pend
21 d’Oreilles Indians, concluded at Hell Gate July
22 16, 1855 (12 Stat. 975), notwithstanding the
23 issuance of any patent on the Reservation.

1 (B) INCLUSIONS.—The term “Reserva-
 2 tion” includes any right-of-way through the
 3 Reservation.

4 (19) SECRETARY.—The term “Secretary”
 5 means the Secretary of the Interior.

6 (20) STATE.—The term “State” means the
 7 State of Montana.

8 (21) TRIBAL WATER RIGHT.—The term “tribal
 9 water right” means the water right of the Tribes as
 10 set forth in the Compact.

11 (22) TRIBES.—

12 (A) IN GENERAL.—The term “Tribes”
 13 means the Confederated Salish and Kootenai
 14 Tribes of the Flathead Reservation of Montana.

15 (B) INCLUSIONS.—The term “Tribes” in-
 16 cludes all officers, agencies, and departments of
 17 the Tribes.

18 (23) TRUST FUND.—The term “Trust Fund”
 19 means the Selis-Qlispe Ksanka Settlement Trust
 20 Fund established by section 9(a).

21 **SEC. 4. RATIFICATION OF COMPACT.**

22 (a) RATIFICATION.—

23 (1) IN GENERAL.—Except as modified by this
 24 Act, and to the extent that the Compact does not

1 conflict with this Act, the Compact is authorized,
2 ratified, and confirmed.

3 (2) AMENDMENTS.—If an amendment to the
4 Compact is executed in accordance with this Act to
5 make the Compact consistent with this Act, the
6 amendment is authorized, ratified, and confirmed.

7 (b) EXECUTION.—

8 (1) IN GENERAL.—To the extent that the Com-
9 pact does not conflict with this Act, the Secretary
10 shall execute the Compact, and all exhibits and ap-
11 pendices to, or parts of, the Compact requiring the
12 signature of the Secretary.

13 (2) MODIFICATIONS.—Nothing in this Act pre-
14 cludes the Secretary from approving any modifica-
15 tion to an appendix or exhibit to the Compact that
16 is consistent with this Act, to the extent that the
17 modification does not otherwise require congres-
18 sional approval under section 2116 of the Revised
19 Statutes (25 U.S.C. 177) or any other applicable
20 Federal law.

21 (c) ENVIRONMENTAL COMPLIANCE.—

22 (1) IN GENERAL.—In implementing the Com-
23 pact and this Act, the Secretary shall comply with
24 each applicable provision of—

1 (A) the Endangered Species Act of 1973
2 (16 U.S.C. 1531 et seq.);

3 (B) the National Environmental Policy Act
4 of 1969 (42 U.S.C. 4321 et seq.); and

5 (C) any other applicable environmental
6 law.

7 (2) EFFECT OF EXECUTION.—

8 (A) IN GENERAL.—The execution of the
9 Compact by the Secretary under this section
10 shall not constitute a major Federal action for
11 purposes of the National Environmental Policy
12 Act of 1969 (42 U.S.C. 4321 et seq.).

13 (B) COMPLIANCE.—The Secretary shall
14 carry out any Federal compliance activity nec-
15 essary to implement the Compact and this Act.

16 **SEC. 5. TRIBAL WATER RIGHT.**

17 (a) INTENT OF CONGRESS.—It is the intent of Con-
18 gress to provide to each allottee benefits that are equal
19 to, or greater than, the benefits the allottee possesses on
20 the day before the date of enactment of this Act, taking
21 into consideration—

22 (1) the potential risks, cost, and time delay as-
23 sociated with litigation that would be resolved by the
24 Compact and this Act;

1 (2) the availability of funding under this Act
2 and from other sources;

3 (3) the availability of water from the tribal
4 water right; and

5 (4) the applicability of section 7 of the Act of
6 February 8, 1887 (25 U.S.C. 381), and this Act to
7 protect the interests of the allottees.

8 (b) CONFIRMATION OF TRIBAL WATER RIGHT.—

9 (1) IN GENERAL.—The tribal water right is
10 ratified, confirmed, and declared to be valid.

11 (2) USE.—Any use of the tribal water right
12 shall be subject to the terms and conditions of the
13 Compact and this Act.

14 (3) CONFLICT.—In the event of a conflict be-
15 tween the Compact and this Act, this Act shall con-
16 trol.

17 (c) TRUST STATUS OF TRIBAL WATER RIGHT.—The
18 tribal water right—

19 (1) shall be held in trust by the United States
20 for the use and benefit of the Tribes and allottees
21 in accordance with this Act; and

22 (2) shall not be subject to loss through nonuse,
23 forfeiture or abandonment, or other operation of
24 law.

25 (d) ALLOTTEES.—

1 (1) APPLICABILITY OF ACT OF FEBRUARY 8,
2 1887.—The provisions of section 7 of the Act of Feb-
3 ruary 8, 1887 (25 U.S.C. 381), relating to the use
4 of water for irrigation purposes shall apply to the
5 tribal water right.

6 (2) ENTITLEMENT TO WATER.—Any entitle-
7 ment to water of an allottee under Federal law shall
8 be satisfied from the tribal water right.

9 (3) ALLOCATIONS.—Each allottee shall be enti-
10 tled to a just and equitable allocation of irrigation
11 water for irrigation purposes.

12 (4) CLAIMS.—

13 (A) EXHAUSTION OF REMEDIES.—Before
14 asserting any claim against the United States
15 under section 7 of the Act of February 8, 1887
16 (25 U.S.C. 381), or any other applicable law,
17 an allottee shall exhaust remedies available
18 under the law of administration.

19 (B) ACTION FOR RELIEF.—After the ex-
20 haustion of all remedies available under the law
21 of administration, an allottee may seek relief
22 under section 7 of the Act of February 8, 1887
23 (25 U.S.C. 381), or any other applicable law.

1 (5) AUTHORITY.—The Secretary shall have the
2 authority to protect the rights of allottees described
3 in this section.

4 (e) AUTHORITY OF TRIBES.—

5 (1) IN GENERAL.—The Tribes shall have the
6 authority to allocate, distribute, and lease the tribal
7 water right for any use on the Reservation in ac-
8 cordance with the Compact, the law of administra-
9 tion, this Act, and applicable Federal law.

10 (2) OFF-RESERVATION USE.—The Tribes may
11 allocate, distribute, and lease the tribal water right
12 for off-Reservation use in accordance with the Com-
13 pact, subject to the approval of the Secretary.

14 (f) LAW OF ADMINISTRATION.—

15 (1) IN GENERAL.—During the period beginning
16 on the date of enactment of this Act and ending on
17 the date on which the law of administration becomes
18 effective on the Reservation, the Secretary shall ad-
19 minister, with respect to the rights of the allottees,
20 the tribal water right in accordance with this Act.

21 (2) APPROVAL.—The Secretary shall approve—

22 (A) the law of administration not later
23 than 180 days after the date of ratification of
24 the law of administration by the Tribes and the
25 State; and

1 (B) each amendment to the law of admin-
2 istration affecting a right of an allottee, to the
3 extent it is consistent with this Act, not later
4 than 180 days after the date of ratification of
5 the amendment by the Tribes and the State.

6 (3) EXTENSION.—Any deadline described in
7 paragraph (2) may be extended by the Secretary,
8 subject to the approval of the Tribes.

9 (g) ADMINISTRATION.—

10 (1) ALIENATION.—The Tribes shall not perma-
11 nently alienate any portion of the tribal water right.

12 (2) PURCHASES OR GRANTS OF LAND FROM IN-
13 DIANS.—The authorization provided by this Act for
14 the allocation, distribution, leasing, or other ar-
15 rangement entered into pursuant to this Act shall be
16 considered to satisfy any requirement for authoriza-
17 tion of the action by treaty or convention under sec-
18 tion 2116 of the Revised Statutes (25 U.S.C. 177).

19 (3) PROHIBITION ON FORFEITURE.—The non-
20 use of all or any portion of the tribal water right by
21 a lessee or contractor shall not result in the for-
22 feiture, abandonment, relinquishment, or other loss
23 of all or any portion of the tribal water right.

1 **SEC. 6. STORAGE ALLOCATION FROM HUNGRY HORSE RES-**
 2 **ERVOIR.**

3 (a) STORAGE ALLOCATION TO TRIBES.—Subject to
 4 subsection (b)(4), the Secretary shall allocate to the Tribes
 5 90,000 acre-feet per year, as measured at the Hungry
 6 Horse Dam, of storage water in Hungry Horse Reservoir
 7 for use by the Tribes for any beneficial purpose on or off
 8 the Reservation.

9 (b) TREATMENT.—

10 (1) IN GENERAL.—The allocation under sub-
 11 section (a) shall be considered to be part of the trib-
 12 al water right.

13 (2) PRIORITY DATE.—The priority date of the
 14 allocation to the Tribes under subsection (a) shall be
 15 July 16, 1855.

16 (3) ADMINISTRATION.—The Tribes shall admin-
 17 ister the water allocated under subsection (a) in ac-
 18 cordance with the Compact and this Act.

19 (4) LIMITATIONS.—

20 (A) IN GENERAL.—The allocation under
 21 subsection (a) shall be limited in accordance
 22 with the report of the State entitled “Biological
 23 Impact Evaluation and Operational Constraints
 24 for a Proposed 90,000 Acre-Foot Withdrawal”,
 25 dated September 14, 2011, and attached to the
 26 Compact as Appendix 8.

1 (B) AMENDMENTS.—

2 (i) IN GENERAL.—The United States,
3 the Tribes, and the State, on mutual writ-
4 ten agreement and in accordance with any
5 applicable law (including the Endangered
6 Species Act of 1973 (16 U.S.C. 1531 et
7 seq.)), may amend the Biological Impact
8 Evaluation Constraints identified in the re-
9 port described in subparagraph (A).

10 (ii) TREATMENT.—Any amendment
11 under clause (i) shall be considered an
12 amendment pursuant to, and not an
13 amendment of, this Act or the Compact.

14 (c) ALLOCATION AGREEMENT.—

15 (1) IN GENERAL.—As a condition of receiving
16 the allocation under subsection (a), the Tribes shall
17 enter into an agreement with the Secretary to estab-
18 lish the terms and conditions of the allocation, in ac-
19 cordance with the Compact and this Act.

20 (2) INCLUSIONS.—The agreement under para-
21 graph (1) shall include provisions establishing that—

22 (A) the agreement shall be without a limit
23 as to a term;

24 (B) the Tribes, and not the United States,
25 shall be entitled to all consideration due to the

1 Tribes under any lease, contract, or agreement
2 entered into by the Tribes pursuant to sub-
3 section (d);

4 (C) the United States shall have no obliga-
5 tion to monitor, administer, or account for—

6 (i) any funds received by the Tribes
7 as consideration under any lease, contract,
8 or agreement entered into by the Tribes
9 pursuant to subsection (d); or

10 (ii) the expenditure of those funds;

11 (D) if the capacity or function of any facil-
12 ity of Hungry Horse Reservoir or Hungry
13 Horse Dam is significantly reduced, or is antici-
14 pated to be significantly reduced, for an ex-
15 tended period of time, the Tribes shall have the
16 same storage rights as other storage contrac-
17 tors with respect to the allocation under sub-
18 section (a);

19 (E) the costs associated with the construc-
20 tion and operation of the storage facilities at
21 Hungry Horse Reservoir and Hungry Horse
22 Dam allocable to the Tribes shall be nonreim-
23 bursable;

24 (F) no water service capital charge shall be
25 due or payable for any water allocated under

1 subsection (a) or the allocation agreement, re-
 2 gardless of whether that water is delivered for
 3 use by the Tribes or under a lease, contract, or
 4 by an agreement entered into by the Tribes
 5 pursuant to subsection (d); and

6 (G) the Tribes shall not be required to
 7 make payments to the United States for any
 8 water allocated under subsection (a) or the
 9 agreement.

10 (d) AGREEMENTS BY TRIBES.—The Tribes may use,
 11 lease, contract, exchange, or enter into one or more other
 12 agreements for use of the water allocated under subsection
 13 (a) if—

14 (1) the water that is the subject of the agree-
 15 ment is used within the Flathead Basin or Clark
 16 Fork Basin within the State; and

17 (2) the agreement does not permanently alien-
 18 ate any portion of the water allocated under sub-
 19 section (a).

20 (e) MITIGATION WATER.—The Tribes shall, in ac-
 21 cordance with the Compact, make available not more than
 22 11,000 acre-feet per year of the water allocated under sub-
 23 section (a) to the State for mitigation of future and exist-
 24 ing growth outside the boundaries of the Reservation.

1 (f) NO CARRYOVER STORAGE.—The allocation under
 2 subsection (a) shall not be increased by any year-to-year
 3 carryover storage.

4 (g) DEVELOPMENT AND DELIVERY COSTS.—The
 5 United States shall not be required to pay the cost of de-
 6 veloping or delivering any water allocated under sub-
 7 section (a).

8 (h) NEW USES.—Except as provided in Article
 9 III.C.1.c of the Compact, the Tribes shall not develop any
 10 new use for the allocation under subsection (a) until the
 11 date on which the agreement entered into under sub-
 12 section (c) takes effect.

13 (i) STATE WATER RIGHTS.—With respect to any
 14 water right arising under the law of the State in the Hun-
 15 gry Horse Reservoir owned or acquired by the Tribes, the
 16 Tribes—

17 (1) may continue any use in existence on the
 18 date of enactment of this Act; and

19 (2) shall not change any use until the date on
 20 which the agreement is entered into under sub-
 21 section (c).

22 (j) EFFECTIVE DATE.—The allocation under sub-
 23 section (a) takes effect on the enforceability date.

1 **SEC. 7. HYDROPOWER.**

2 (a) BUREAU OF RECLAMATION JURISDICTION.—The
3 Commissioner shall have exclusive jurisdiction to authorize
4 the development of any hydroelectric power generation
5 project within the Reservation.

6 (b) EXCLUSIVE RIGHT OF THE TRIBES.—Notwith-
7 standing any other provision of law, the Tribes shall have
8 the exclusive right to develop and market any hydroelectric
9 power generation project on bodies of water within the
10 Reservation.

11 (c) BUREAU OF RECLAMATION COOPERATION.—The
12 Commissioner shall cooperate with the Tribes in the devel-
13 opment of any hydroelectric power generation project
14 under this section.

15 (d) AGREEMENT.—Before construction of a hydro-
16 electric power generation project under this section, the
17 Tribes shall enter into an agreement with the Commis-
18 sioner that includes provisions—

19 (1) requiring that—

20 (A) the design, construction, and operation
21 of the hydroelectric power generation project
22 shall be consistent with the Bureau of Reclama-
23 tion guidelines and methods for hydroelectric
24 power development at Bureau of Reclamation
25 facilities, as appropriate; and

1 (B) the hydroelectric power generation
2 project will not impair the efficiencies of any
3 Bureau of Indian Affairs or Bureau of Rec-
4 lamation project for authorized purposes;

5 (2) regarding construction and operating cri-
6 teria and emergency procedures; and

7 (3) under which any modification proposed by
8 the Tribes to a facility owned by the Bureau of In-
9 dian Affairs or the Bureau of Reclamation shall be
10 subject to review and approval by the Secretary, act-
11 ing through the Commissioner, in coordination with
12 the Director of the Bureau of Indian Affairs if appli-
13 cable.

14 (e) USE OF HYDROELECTRIC POWER BY TRIBES.—
15 Any hydroelectric power generated in accordance with this
16 section shall be used or marketed by the Tribes.

17 (f) REVENUES.—The Tribes shall collect and retain
18 any revenue from the sale of hydroelectric power generated
19 by a hydroelectric power generation project under this sec-
20 tion.

21 (g) LIABILITY OF UNITED STATES.—The United
22 States shall have no obligation to monitor, administer, or
23 account for—

24 (1) any revenue received by the Tribes under
25 this section; or

1 (2) the expenditure of that revenue.

2 **SEC. 8. IRRIGATION ACTIVITIES.**

3 (a) IN GENERAL.—Subject to the availability of ap-
 4 propriations, the Secretary, acting through the Commis-
 5 sioner, shall, in accordance with subsection (b), carry out
 6 the following activities relating to the Flathead Indian irri-
 7 gation project:

8 (1) REHABILITATION.—

9 (A) IN GENERAL.—Rehabilitation of struc-
 10 tures, canals, and pumping facilities, including
 11 dam safety improvements, irrigation facility up-
 12 grades that improve water management and
 13 operational control at irrigation diversion
 14 works, and irrigation facility upgrades to reduce
 15 losses in conveyance of water from irrigation
 16 sources of supply to irrigation points of use.

17 (B) REHABILITATION ACTIVITIES.—Reha-
 18 bilitation activities under subparagraph (A) in-
 19 clude reconstruction, replacement, and automa-
 20 tion at irrigation diversion works, lining of open
 21 canals, and placement of open canals in pipe.

22 (2) MODERNIZATION.—Modernization, includ-
 23 ing the planning, design, and construction of addi-
 24 tional pumping facilities and operational improve-

ments to infrastructure within the distribution network of the Flathead Indian irrigation project.

(3) MITIGATION, RECLAMATION, AND RESTORATION.—Mitigation, reclamation, and restoration of streams, wetlands, banks, slopes, and wasteways within, appurtenant to, or affected by the Flathead Indian irrigation project.

(4) ACQUISITION OF INTERESTS.—Acquisition, in accordance with subsection (e), of easements or other interests in real property necessary to carry out any activity under this section.

(5) LEAD AGENCY.—The Bureau of Reclamation shall serve as the lead agency with respect to any activity carried out under this section.

(b) SCOPE OF BUREAU OF RECLAMATION ACTIVITIES.—

(1) REHABILITATION ACTIVITIES.—

(A) IN GENERAL.—Subject to the conditions described in subparagraph (B), the scope of a rehabilitation activity under subsection (a)(1) shall be as generally described in—

(i) the document entitled “Engineering Evaluation and Condition Assessment: Flathead Indian Irrigation Project”, prepared by HKM Engineering for the Bu-

reau of Indian Affairs, Division of Irrigation, Power, and Safety of Dams, and dated March 2008; and

(ii) the document entitled “Update Engineering Evaluation of Existing Conditions: Flathead Agency Irrigation Division (FAID)”, prepared by HKM Engineering for the Confederated Salish and Kootenai Tribes, and dated July 2005.

(B) CONDITIONS.—The conditions referred to in subparagraph (A) are that, before carrying out the activity, the Secretary shall—

(i) review the design of the proposed activity;

(ii) perform value engineering analyses relating to the proposed activity; and

(iii) perform appropriate Federal environmental compliance activities relating to the proposed activity.

(2) MODERNIZATION ACTIVITIES.—

(A) IN GENERAL.—Subject to the conditions described in subparagraph (B), the scope of a modernization activity under subsection (a)(2) shall be as generally described in—

1 (i) the document entitled “Flathead
2 Indian Irrigation Project Modernization
3 Plan” and prepared for the Bureau of In-
4 dian Affairs Division of Water; and

5 (ii) the document entitled “Power by
6 Irrigation Technology Research Center at
7 the Department of Agricultural Engineer-
8 ing at California Polytechnic State Univer-
9 sity”.

10 (B) CONDITIONS.—The conditions referred
11 to in subparagraph (A) are that, before car-
12 rying out the activity, the Secretary shall—

13 (i) review the design of the proposed
14 activity;

15 (ii) perform value engineering anal-
16 yses relating to the proposed activity; and

17 (iii) perform appropriate Federal envi-
18 ronmental compliance activities relating to
19 the proposed activity.

20 (3) MITIGATION, RECLAMATION, AND RESTORA-
21 TION ACTIVITIES.—

22 (A) IN GENERAL.—Subject to the condi-
23 tions described in subparagraph (B), the scope
24 of a mitigation, reclamation, and restoration ac-
25 tivity under subsection (a)(3) shall be as gen-

1 erally described in the document entitled “Final
2 Biological Assessment for Operation and Main-
3 tenance of the Flathead Indian Irrigation
4 Project, Including Transfer”, prepared by the
5 United States Department of the Interior, Bu-
6 reau of Indian Affairs, and dated January
7 2008.

8 (B) CONDITIONS.—The conditions referred
9 to in subparagraph (A) are that, before car-
10 rying out the activity, the Secretary shall—

11 (i) plan and design the activity;

12 (ii) perform value engineering anal-
13 yses relating to the activity; and

14 (iii) perform appropriate Federal envi-
15 ronmental compliance activities relating to
16 the activity.

17 (4) NEGOTIATION WITH TRIBES.—After review-
18 ing the design of a proposed activity under para-
19 graphs (1)(B)(i), (2)(B)(i), and (3)(B)(i) and before
20 carrying out the activity, the Secretary shall nego-
21 tiate with the Tribes appropriate changes to the
22 final design of the activity to ensure that the final
23 design complies with applicable—

24 (A) industry standards; and

1 (B) tribal natural resources management
2 plans.

3 (c) FUNDING.—

4 (1) IN GENERAL.—The total amount of obliga-
5 tions incurred by the Secretary in carrying out this
6 section shall not exceed \$1,519,408,000, of which—

7 (A) \$471,071,000 shall be allocated to
8 carry out the activities under subsection (a)(1);

9 (B) \$377,901,000 shall be allocated to
10 carry out the activities under subsection (a)(2);
11 and

12 (C) \$670,436,000 shall be allocated to
13 carry out the activities under subsection (a)(3).

14 (2) NONREIMBURSABILITY OF COSTS.—All
15 costs incurred by the Secretary in carrying out this
16 section shall be nonreimbursable.

17 (3) NON-FEDERAL CONTRIBUTION.—No part of
18 an activity under paragraph (1) or (2) of subsection
19 (a) shall be commenced until the State has made
20 available \$55,000,000 to carry out those activities.

21 (4) ADMINISTRATION.—

22 (A) IN GENERAL.—Subject to subpara-
23 graph (B), the Commissioner and the Tribes
24 shall negotiate the cost of any oversight activity
25 carried out by the Bureau of Reclamation

1 under any agreement entered into under sub-
 2 section (g).

3 (B) LIMITATION ON COST.—The total cost
 4 described in subparagraph (A) shall not exceed
 5 3 percent of the total project costs for each
 6 project.

7 (5) PROJECT EFFICIENCIES.—If the total cost
 8 of planning, design, and construction activities of
 9 the Flathead Indian irrigation project described in
 10 subsection (a) results in cost savings and is less
 11 than the amounts authorized to be obligated, the
 12 Secretary, on request of the Tribes, may transfer an
 13 amount equal to those cost savings to one or more
 14 accounts established under section 10(b).

15 (d) OPERATION AND MAINTENANCE AGREEMENT.—
 16 The Secretary, acting through the Director of the Bureau
 17 of Indian Affairs, shall enter into an agreement with the
 18 Tribes for the operation and maintenance of the Flathead
 19 Indian irrigation project in accordance with applicable law,
 20 including section 7 of the Act of February 8, 1887 (24
 21 Stat. 390, chapter 119; 25 U.S.C. 381).

22 (e) EASEMENTS AND RIGHTS-OF-WAY.—

23 (1) TRIBAL EASEMENTS AND RIGHTS-OF-
 24 WAY.—

1 (A) IN GENERAL.—On request of the Sec-
 2 retary, as a condition of receiving benefits
 3 under this section, the Tribes shall grant, at no
 4 cost to the United States, such easements and
 5 rights-of-way over the land of the Tribes as are
 6 necessary for construction relating to activities
 7 under subsection (a).

8 (B) JURISDICTION.—An easement or
 9 right-of-way granted by the Tribes under sub-
 10 paragraph (A) shall not affect in any respect
 11 the civil or criminal jurisdiction of the Tribes
 12 over the easement or right-of-way.

13 (2) LANDOWNER EASEMENTS AND RIGHTS-OF-
 14 WAY.—In partial consideration for construction re-
 15 lating to activities under subsection (a) and as a
 16 condition of receiving service from the Flathead In-
 17 dian irrigation project or the Mission Valley Power
 18 Project, a landowner shall grant, at no cost to the
 19 United States or the Tribes, such easements and
 20 rights-of-way over the land of the landowner as are
 21 necessary for the construction, rehabilitation, oper-
 22 ation, and maintenance of the Flathead Indian irri-
 23 gation project or the Mission Valley Power Project.

24 (f) LAND ACQUIRED BY THE UNITED STATES OR
 25 THE TRIBES.—Any land acquired within the Reservation

1 by the United States or the Tribes relating to construction
 2 relating to activities under subsection (a) shall be held in
 3 trust by the United States for the benefit of the Tribes.

4 (g) AGREEMENTS UNDER ISDEAA.—On request of
 5 the Tribes, the Secretary shall enter into one or more
 6 agreements with the Tribes in accordance with the Indian
 7 Self-Determination and Education Assistance Act (25
 8 U.S.C. 450 et seq.) to carry out this section.

9 (h) EFFECT.—Nothing in this section—

10 (1) alters any applicable law under which the
 11 Bureau of Indian Affairs collects assessments or car-
 12 ries out the operation and maintenance of the Flat-
 13 head Indian irrigation project; or

14 (2) affects the availability of amounts made
 15 available under section 9(m) or 10(f).

16 **SEC. 9. SELIS-QLISPE KSANKA SETTLEMENT TRUST FUND.**

17 (a) ESTABLISHMENT.—

18 (1) IN GENERAL.—There is established in the
 19 Treasury of the United States a fund to be known
 20 as the “Selis-Qlispe Ksanka Settlement Trust
 21 Fund” to be managed, invested, and distributed by
 22 the Secretary and to remain available until ex-
 23 pended, for the purpose of carrying out this Act.

24 (2) COMPOSITION.—The Trust Fund shall con-
 25 sist of the amounts deposited in the Trust Fund

1 under subsection (c), together with any interest
2 earned on those amounts.

3 (b) ACCOUNTS.—The Secretary shall establish in the
4 Trust Fund the following accounts:

5 (1) AGRICULTURE DEVELOPMENT ACCOUNT.—
6 The Selis-Qlispe Ksanka Agriculture Development
7 Account.

8 (2) ECONOMIC DEVELOPMENT ACCOUNT.—The
9 Selis-Qlispe Ksanka Economic Development Ac-
10 count.

11 (3) COMMUNITY DEVELOPMENT ACCOUNT.—
12 The Selis-Qlispe Ksanka Community Development
13 Account.

14 (c) DEPOSITS.—The Secretary shall deposit in the
15 Trust Fund—

16 (1) in the Agriculture Development Account,
17 the amount made available pursuant to subsection
18 (m)(1)(A);

19 (2) in the Economic Development Account, the
20 amount made available pursuant to subsection
21 (m)(1)(B); and

22 (3) in the Community Development Account,
23 the amount made available pursuant to subsection
24 (m)(1)(C).

1 (d) MANAGEMENT.—The Secretary shall manage, in-
2 vest, and distribute all amounts in the Trust Fund in a
3 manner that is consistent with the investment authority
4 of the Secretary under—

5 (1) the Act of April 1, 1880 (21 Stat. 70, chap-
6 ter 41; 25 U.S.C. 161);

7 (2) the first section of the Act of June 24,
8 1938 (52 Stat. 1037, chapter 648; 25 U.S.C. 162a);

9 (3) obligations of Federal corporations and
10 Federal Government-sponsored entities, the charter
11 documents of which provide that the obligations of
12 the entities are lawful investments for federally man-
13 aged funds, including—

14 (A) obligations of the United States Postal
15 Service described in section 2005 of title 39,
16 United States Code;

17 (B) bonds and other obligations of the
18 Tennessee Valley Authority described in section
19 15d of the Tennessee Valley Authority Act of
20 1933 (16 U.S.C. 831n–4);

21 (C) mortgages, obligations, or other securi-
22 ties of the Federal Home Loan Mortgage Cor-
23 poration described in section 303 of the Federal
24 Home Loan Mortgage Corporation Act (12
25 U.S.C. 1452); and

1 (D) bonds, notes, or debentures of the
 2 Commodity Credit Corporation described in sec-
 3 tion 4 of the Act of March 8, 1938 (15 U.S.C.
 4 713a-4);

5 (4) the American Indian Trust Fund Manage-
 6 ment Reform Act of 1994 (25 U.S.C. 4001 et seq.);
 7 and

8 (5) this section.

9 (e) CREDITS TO ACCOUNTS.—The interest on, and
 10 the proceeds from, the sale or redemption of any obliga-
 11 tions held in an account under the Trust Fund shall be
 12 credited to, and form a part of, that account.

13 (f) AVAILABILITY OF AMOUNTS.—Amounts appro-
 14 priated to, and deposited in, the Trust Fund, including
 15 any investment earnings, shall be made available to the
 16 Tribes by the Secretary beginning on the enforceability
 17 date.

18 (g) WITHDRAWALS UNDER AIFRMA.—

19 (1) IN GENERAL.—The Tribes may withdraw
 20 any portion of the funds in the Trust Fund on ap-
 21 proval by the Secretary of a tribal management plan
 22 submitted by the Tribes in accordance with the
 23 American Indian Trust Fund Management Reform
 24 Act of 1994 (25 U.S.C. 4001 et seq.).

25 (2) REQUIREMENTS.—

1 (A) IN GENERAL.—In addition to the re-
2 quirements under the American Indian Trust
3 Fund Management Reform Act of 1994 (25
4 U.S.C. 4001 et seq.), the tribal management
5 plan under paragraph (1) shall require that the
6 Tribes spend all amounts withdrawn from the
7 Trust Fund in accordance with this Act.

8 (B) ENFORCEMENT.—The Secretary may
9 carry out such judicial and administrative ac-
10 tions as the Secretary determines to be nec-
11 essary to enforce the tribal management plan to
12 ensure that amounts withdrawn by the Tribes
13 from the Trust Fund under this subsection are
14 used in accordance with this Act.

15 (h) WITHDRAWALS UNDER EXPENDITURE PLAN.—

16 (1) IN GENERAL.—The Tribes may submit to
17 the Secretary a request to withdraw funds from the
18 Trust Fund in accordance with an expenditure plan
19 approved under paragraph (4).

20 (2) REQUIREMENTS.—To be eligible to with-
21 draw funds under an expenditure plan under para-
22 graph (1), the Tribes shall submit to the Secretary
23 for approval an expenditure plan for any portion of
24 the Trust Fund that the Tribes elect to withdraw
25 pursuant to this subsection, subject to the condition

1 that the funds shall be used for the purposes de-
2 scribed in this Act.

3 (3) INCLUSIONS.—An expenditure plan under
4 this subsection shall include a description of the
5 manner and purpose for which the amounts pro-
6 posed to be withdrawn from the Trust Fund will be
7 used by the Tribes, in accordance with this sub-
8 section.

9 (4) APPROVAL.—

10 (A) IN GENERAL.—On receipt of an ex-
11 penditure plan under this subsection, the Sec-
12 retary shall approve the plan not later than 90
13 days after the date of receipt, if the Secretary
14 determines that the plan is—

15 (i) reasonable; and

16 (ii) consistent with, and will be used
17 for, the purposes of this Act.

18 (B) NONACTION.—If the Secretary does
19 not approve or disapprove an expenditure plan
20 under subparagraph (A) not later than 90 days
21 after the date of receipt, the expenditure plan
22 shall be considered to have been approved by
23 the Secretary.

24 (5) ENFORCEMENT.—The Secretary may carry
25 out such judicial and administrative actions as the

1 Secretary determines to be necessary to enforce an
2 expenditure plan to ensure that amounts disbursed
3 under this subsection are used in accordance with
4 this Act.

5 (i) USES.—Amounts from the Trust Fund shall be
6 used by the Tribes for the following purposes:

7 (1) AGRICULTURE DEVELOPMENT ACCOUNT.—

8 The Agriculture Development Account shall be
9 used—

10 (A) to implement the tribal water right
11 through rehabilitation and improvement of agri-
12 cultural Indian land within the Reservation;

13 (B) to construct and rehabilitate livestock
14 fencing on Indian land within the Reservation;

15 (C) to mitigate and control noxious weeds
16 on Indian land within the Reservation;

17 (D) to plan, design, and construct improve-
18 ments to irrigation systems on Indian land
19 served by the Flathead Indian irrigation
20 project;

21 (E) to plan, design, and construct irriga-
22 tion facilities on Indian land within the Res-
23 ervation that is not served by the Flathead In-
24 dian irrigation project; and

1 (F) to install screens, barriers, passages,
 2 or ladders to prevent fish entrainment in irriga-
 3 tion ditches and canals within the Reservation.

4 (2) ECONOMIC DEVELOPMENT ACCOUNT.—The
 5 Economic Development Account shall be used—

6 (A) to implement the tribal water right;

7 (B) to plan, design, construct, operate,
 8 maintain, and replace community water dis-
 9 tribution and wastewater treatment facilities on
 10 the Reservation; and

11 (C) to develop geothermal water resources
 12 on Indian land within the Reservation.

13 (3) COMMUNITY DEVELOPMENT ACCOUNT.—

14 (A) IN GENERAL.—The Community Devel-
 15 opment Account shall be used to develop and
 16 establish community services, including edu-
 17 cation services and centers for native language
 18 and cultural education for children and adults
 19 on or near the Reservation.

20 (B) DISTRIBUTION.—The Community De-
 21 velopment Account shall be distributed as fol-
 22 lows:

23 (i) Subject to clause (ii), all interest
 24 earned on the account shall be distributed
 25 to the Tribes annually.

1 (ii) If the Tribes withdraw all or a
 2 portion of the principal under subsection
 3 (g) or (h)—

4 (I) clause (i) shall not apply; and
 5 (II) the Secretary shall distribute
 6 the interest earned on the account for
 7 that year as the Secretary determines
 8 appropriate.

9 (j) LIABILITY.—The Secretary and the Secretary of
 10 the Treasury shall not be liable for the expenditure or in-
 11 vestment of any amounts withdrawn from the Trust Fund
 12 by the Tribes under subsection (g) or (h).

13 (k) NO PER CAPITA DISTRIBUTIONS.—No portion of
 14 the Fund shall be distributed on a per capita basis to any
 15 member of the Tribes.

16 (l) DEPOSIT OF FUNDS.—On request by the Tribes,
 17 the Secretary may transfer amounts from an account de-
 18 scribed in paragraph (1), (2), or (3) of subsection (b) to
 19 any other account the Secretary determines to be appro-
 20 priate.

21 (m) AUTHORIZATION OF APPROPRIATIONS.—

22 (1) IN GENERAL.—Subject to paragraph (2),
 23 there are authorized to be appropriated to the Sec-
 24 retary, as adjusted on appropriation to reflect
 25 changes in the Consumer Price Index for All Urban

1 Consumers West Urban 50,000 to 1,500,000 index
2 dated April 2010 for the amount appropriated—

3 (A) for deposit in the Agriculture Develop-
4 ment Account, \$365,207,225;

5 (B) for deposit in the Economic Develop-
6 ment Account, \$93,633,566; and

7 (C) for deposit in the Community Develop-
8 ment Account, \$233,361,200.

9 (2) ADJUSTMENTS.—

10 (A) IN GENERAL.—The adjustment of the
11 amounts authorized to be appropriated pursu-
12 ant to paragraph (1) shall occur each time an
13 amount is appropriated for an account and
14 shall add to, or subtract from, as applicable, the
15 total amount authorized.

16 (B) REPETITION.—The adjustment proc-
17 ess under this subsection shall be repeated for
18 each subsequent amount appropriated until the
19 amount authorized, as adjusted, has been ap-
20 propriated.

21 (C) TREATMENT.—The amount of an ad-
22 justment may be considered—

23 (i) to be authorized as of the date on
24 which congressional action occurs; and

1 (ii) in determining the amount author-
 2 ized to be appropriated.

3 **SEC. 10. SALISH AND KOOTENAI COMPACT FUND.**

4 (a) ESTABLISHMENT.—There is established in the
 5 Treasury of the United States a nontrust, interest bearing
 6 account, to be known as the “Salish and Kootenai Com-
 7 pact Fund” to be managed and distributed by the Sec-
 8 retary, for use by the Secretary to carry out this Act.

9 (b) ACCOUNTS.—The Secretary shall establish in the
 10 Compact Fund the following accounts:

11 (1) The Compact Implementation Account.

12 (2) The Flathead Indian Irrigation Project Ac-
 13 count.

14 (c) DEPOSITS.—The Secretary shall deposit in the
 15 Compact Fund—

16 (1) in the Compact Implementation Account,
 17 the amount made available pursuant to subsection
 18 (f)(1)(A); and

19 (2) in the Flathead Indian Irrigation Project
 20 Account, the amount made available pursuant to
 21 subsection (f)(1)(B).

22 (d) USES.—Amounts from the Compact Fund shall
 23 be used by the Tribes for the following purposes:

24 (1) COMPACT IMPLEMENTATION ACCOUNT.—

25 The Compact Implementation Account shall be used

1 in accordance with subsection (e)(2) and for admin-
 2 istration, implementation, and management of the
 3 tribal water right and the regulation and administra-
 4 tion of water rights within the Reservation under
 5 this Act, the Compact, and the law of administra-
 6 tion.

7 (2) FLATHEAD INDIAN IRRIGATION PROJECT
 8 ACCOUNT.—The Flathead Indian Irrigation Project
 9 Account shall be used to carry out section 8.

10 (e) MANAGEMENT.—

11 (1) IN GENERAL.—Except as provided in para-
 12 graph (2), amounts in the Compact Implementation
 13 Account shall be available to the Secretary for ex-
 14 penditure beginning on the enforceability date.

15 (2) FUNDING FOR TRIBAL IMPLEMENTATION
 16 ACTIVITIES.—Notwithstanding paragraph (1), sub-
 17 ject to the availability of appropriations, as soon as
 18 practicable after the date on which the Tribes ratify
 19 the Compact, the Secretary shall make available
 20 from the Compact Implementation Account to the
 21 Tribes to carry out this Act \$7,194,496.

22 (f) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) IN GENERAL.—Subject to paragraph (2),
 24 there are authorized to be appropriated to the Sec-
 25 retary, as adjusted on appropriation to reflect

1 changes in the Bureau of Reclamation Construction
2 Cost Trends Index dated April 2010 for the amount
3 appropriated—

4 (A) for deposit in the Compact Implemen-
5 tation Account, \$116,209,294; and

6 (B) for deposit in the Flathead Indian Irri-
7 gation Project Account, \$1,519,408,000.

8 (2) ADJUSTMENTS.—

9 (A) IN GENERAL.—The adjustment of the
10 amounts authorized to be appropriated pursu-
11 ant to paragraph (1) shall occur each time an
12 amount is appropriated for an account and
13 shall add to, or subtract from, as applicable, the
14 total amount authorized.

15 (B) REPETITION.—The adjustment proc-
16 ess under this subsection shall be repeated for
17 each subsequent amount appropriated until the
18 amount authorized, as adjusted, has been ap-
19 propriated.

20 (C) TREATMENT.—The amount of an ad-
21 justment may be considered—

22 (i) to be authorized as of the date on
23 which congressional action occurs; and

24 (ii) in determining the amount author-
25 ized to be appropriated.

1 **SEC. 11. WATER RIGHTS IN CERTAIN FEDERAL LAND.**

2 (a) IN GENERAL.—The instream flow water rights of
3 the Tribes in or adjacent to the land described subsection
4 (b), as described in the Compact, are confirmed.

5 (b) LAND DESCRIBED.—The land referred to in sub-
6 section (a) is—

- 7 (1) Bitterroot National Forest;
- 8 (2) Flathead National Forest;
- 9 (3) Kootenai National Forest;
- 10 (4) Lolo National Forest; and
- 11 (5) the National Bison Range Complex and af-
12 filiated Waterfowl Production Areas.

13 **SEC. 12. WAIVERS AND RELEASES OF CLAIMS.**

14 (a) IN GENERAL.—

15 (1) CLAIMS BY TRIBES AND UNITED STATES AS
16 TRUSTEE FOR TRIBES.—Subject to the retention of
17 water rights described in subsection (c), as consider-
18 ation for recognition of the tribal water right and
19 other benefits under the Compact and this Act, the
20 Tribes, on behalf of the Tribes and members of the
21 Tribes (except any member of the Tribes in the ca-
22 pacity of the member as an allottee), and the United
23 States, acting as trustee for the Tribes and the
24 members of the Tribes (except any member of the
25 Tribes in the capacity of the member as an allottee),
26 shall execute a waiver and release of all claims for

1 water rights within the State that the Tribes, or the
2 United States acting as trustee for the Tribes, as-
3 serted or could have asserted in any proceeding, in-
4 cluding a State stream adjudication, on or before the
5 enforceability date, except to the extent that those
6 rights are recognized in the Compact and this Act.

7 (2) CLAIMS BY THE UNITED STATES AS TRUST-
8 EE FOR ALLOTTEES.—Subject to the retention of
9 water rights described in subsection (c), as consider-
10 ation for recognition of the tribal water right and
11 other benefits under the Compact and this Act, the
12 United States, acting as trustee for allottees, may
13 execute a waiver and release of all claims for water
14 rights within the Reservation that the United States,
15 acting as trustee for the allottees, asserted or could
16 have asserted in any proceeding, including a State
17 stream adjudication, on or before the enforceability
18 date, except to the extent that those rights are rec-
19 ognized in the Compact and this Act.

20 (3) CLAIMS BY TRIBES AGAINST THE UNITED
21 STATES.—Subject to the retention of water rights
22 described in subsection (c), the Tribes, on behalf of
23 the Tribes and members of the Tribes (except any
24 member of the Tribes in the capacity of the member
25 as an allottee), shall execute a waiver and release of

1 all claims against the United States (including any
2 agency or employee of the United States)—

3 (A) relating to—

4 (i) claims for water rights within the
5 State that the United States, acting as
6 trustee for the Tribes, asserted or could
7 have asserted in any proceeding, including
8 a stream adjudication in the State, except
9 to the extent that those rights are recog-
10 nized as part of the tribal water right
11 under this Act;

12 (ii) damage, loss, or injury to water,
13 water rights, land, or natural resources
14 due to loss of water or water rights (in-
15 cluding damages, losses, or injuries to
16 hunting, fishing, gathering, or cultural
17 rights due to loss of water or water rights,
18 claims relating to interference with, diver-
19 sion, or taking of water, or claims relating
20 to failure to protect, acquire, replace, or
21 develop water, water rights, or water infra-
22 structure) within the State that first ac-
23 crued on or before the enforceability date;

1 (iii) failure to establish or provide a
2 municipal, rural, or industrial water deliv-
3 ery system on the Reservation;

4 (iv) failure to provide—

5 (I) for operation or maintenance,
6 or deferred maintenance, for the Flat-
7 head Indian irrigation project or any
8 other irrigation system or irrigation
9 project; or

10 (II) dam safety improvements to
11 dams within the Reservation;

12 (v) the litigation of claims relating to
13 the water rights of the Tribes in the State;
14 or

15 (vi) the negotiation, execution, or
16 adoption of the Compact or this Act;

17 (B) reserved in subsections (b) through (d)
18 of section 6 of the settlement for the case styled
19 Nez Perce Tribe v. Salazar, No. 06cv2239TFH
20 (D.D.C. 2012); and

21 (C) that first accrued on or before the en-
22 forceability date arising from the taking or ac-
23 quisition of the land of the Tribes or resources
24 for the construction of the features of the Flat-
25 head Indian irrigation project.

1 (b) ENFORCEABILITY DATE.—The waivers under
2 subsection (a) shall take effect on the date on which the
3 Secretary publishes in the Federal Register a statement
4 of findings that—

5 (1)(A) the Montana Water Court has issued a
6 final judgment and decree approving the Compact;
7 or

8 (B) if the Montana Water Court is found to
9 lack jurisdiction, the United States district court has
10 approved the Compact as a consent decree and the
11 approval is final;

12 (2) all amounts authorized to be appropriated
13 under sections 9(m) and 10(f) have been appro-
14 priated;

15 (3) the Secretary has fulfilled the requirements
16 of section 5(f)(2);

17 (4) the State has appropriated and paid into an
18 interest-bearing escrow account any payments due
19 as of the date of enactment of this Act to the Tribes
20 under the Compact and this Act;

21 (5) the Tribes have ratified the Compact;

22 (6) the Secretary has fulfilled the requirements
23 of section 6(a); and

1 (7) the waivers and releases described in sub-
2 section (a) have been executed by the Tribes and the
3 Secretary.

4 (c) RESERVATION OF RIGHTS AND RETENTION OF
5 CLAIMS.—Notwithstanding subsection (a), the Tribes, on
6 behalf of the Tribes and members of the Tribes, and the
7 United States, acting as trustee for the Tribes and
8 allottees, retain—

9 (1) all claims relating to—

10 (A) enforcement of, or claims accruing
11 after the enforceability date relating to water
12 rights recognized under, the Compact, any final
13 decree, or this Act; and

14 (B) activities affecting the quality of
15 water, including any claims the Tribes may
16 have under—

17 (i) the Comprehensive Environmental
18 Response, Compensation, and Liability Act
19 of 1980 (42 U.S.C. 9601 et seq.), includ-
20 ing damages to natural resources;

21 (ii) the Safe Drinking Water Act (42
22 U.S.C. 300f et seq.);

23 (iii) the Federal Water Pollution Con-
24 trol Act (33 U.S.C. 1251 et seq.) (com-

1 monly referred to as the “Clean Water
2 Act”); and

3 (iv) any regulations implementing the
4 Acts described in clauses (i) through (iii);

5 (2) all claims relating to damage caused by
6 structures, dams, or facilities, as a result of pre-
7 existing conditions, while performing any activity
8 under section 8;

9 (3) all rights to use and protect water rights ac-
10 quired after the date of enactment of this Act;

11 (4) all claims relating to damage, loss, or injury
12 to land or natural resources that are not due to loss
13 of water or water rights (including hunting, fishing,
14 gathering, or cultural rights);

15 (5) all claims to title to land, including title to
16 land as a result of the movement of water bodies;

17 (6) all claims relating to failure to make pro-
18 ductive use of any land created by the movement of
19 water bodies to which the Tribes has claimed title;
20 and

21 (7) all rights, remedies, privileges, immunities,
22 and powers not specifically waived and released
23 under this Act or the Compact.

24 (d) EFFECT OF COMPACT AND ACT.—Nothing in the
25 Compact or this Act—

1 (1) affects the ability of the United States, act-
2 ing as a sovereign, to take actions authorized by law,
3 including any laws relating to health, safety, or the
4 environment, including—

5 (A) the Comprehensive Environmental Re-
6 sponse, Compensation, and Liability Act of
7 1980 (42 U.S.C. 9601 et seq.);

8 (B) the Safe Drinking Water Act (42
9 U.S.C. 300f et seq.);

10 (C) the Federal Water Pollution Control
11 Act (33 U.S.C. 1251 et seq.) (commonly re-
12 ferred to as the “Clean Water Act”); and

13 (D) any regulations implementing the Acts
14 described in subparagraphs (A) through (C);

15 (2) affects the ability of the United States to
16 act as trustee for any other Indian tribe or allottee
17 of any other Indian tribe;

18 (3) confers jurisdiction on any State court—

19 (A) to interpret Federal laws described in
20 paragraph (1);

21 (B) to determine the duties of the United
22 States or other parties under Federal laws de-
23 scribed in paragraph (1); or

24 (C) to conduct judicial review of Federal
25 agency action;

1 (4) waives any claim of a member of the Tribes
2 in an individual capacity that does not derive from
3 a right of the Tribes;

4 (5) revives any claim waived by the Tribes in
5 the case styled *Nez Perce Tribe v. Salazar*, No.
6 06cv2239TFH (D.D.C. 2012); or

7 (6) revives any claim released by an allottee or
8 a member of the Tribes in the settlement for the
9 case styled *Cobell v. Salazar*, No. 1:96CV01285–JR
10 (D.D.C. 2012).

11 (e) TOLLING OF CLAIMS.—

12 (1) IN GENERAL.—Each applicable period of
13 limitation and time-based equitable defense relating
14 to a claim described in this section shall be tolled for
15 the period beginning on the date of enactment of
16 this Act and ending on the date on which the
17 amounts made available to carry out this Act are
18 transferred to the Secretary.

19 (2) EFFECT OF SUBSECTION.—Nothing in this
20 subsection revives any claim or tolls any period of
21 limitation or time-based equitable defense that ex-
22 pired before the date of enactment of this Act.

23 (f) EXPIRATION.—If all appropriations authorized
24 under this Act have not been made available to the Sec-
25 retary by January 21, 2031—

1 (1) the waivers under subsection (a) shall have
2 no force or effect;

3 (2) the authorization, ratification, and con-
4 firmation of the Compact under section 4(a) shall
5 have no force or effect;

6 (3) the Tribes shall return to the United States,
7 unless otherwise agreed to by the Tribes and the
8 United States and approved by Congress—

9 (A) any unexpended Federal funds made
10 available to carry out this Act, together with
11 any interest earned on those funds;

12 (B) any water rights or contracts to use
13 water under this Act; and

14 (C) title to other property acquired or con-
15 structed with Federal funds made available to
16 carry out this Act; and

17 (4) the United States may offset any Federal
18 funds made available to carry out this Act that were
19 expended or withdrawn (except for Federal funds
20 used to acquire or construct property that is re-
21 turned to the United States under paragraph (2)),
22 together with any interest earned on those funds,
23 against any claims against the United States—

1 (A) relating to water rights in the State
 2 asserted by the Tribes or any users of the tribal
 3 water right; or

4 (B) in any future settlement of the water
 5 rights of the Tribes or allottees.

6 **SEC. 13. SATISFACTION OF CLAIMS.**

7 (a) TRIBAL CLAIMS.—The benefits realized by the
 8 Tribes under this Act shall be in full satisfaction of all
 9 claims of the Tribes against the United States that are
 10 waived and released in accordance with section 12.

11 (b) ALLOTTEE CLAIMS.—The benefits realized by the
 12 allottees under this Act shall be in full satisfaction of—

13 (1) all claims that are waived and released pur-
 14 suant to section 12(a)(2); and

15 (2) any claims of the allottees against the
 16 United States that the allottees have or could have
 17 asserted that are similar in nature to any claim de-
 18 scribed in section 12(a)(2).

19 **SEC. 14. MISCELLANEOUS PROVISIONS.**

20 (a) AMENDMENTS.—

21 (1) ACT OF APRIL 23, 1904.—Section 9 of the
 22 Act of April 23, 1904 (33 Stat. 304, chapter 1495;
 23 35 Stat. 450, chapter 216), is amended in the sev-
 24 enth paragraph by striking “When the payments”
 25 and all that follows through “acceptable to the Sec-

1 retary of the Interior” and inserting the following:
 2 “The irrigation and power diversions of the Flathead
 3 Indian irrigation project (as defined in section 3 of
 4 the Salish and Kootenai Water Rights Settlement
 5 Act of 2016) shall be held in trust for the benefit
 6 of the Confederated Salish and Kootenai Tribes”.

7 (2) ACT OF MAY 25, 1948.—Section 2 of the Act
 8 of May 25, 1948 (62 Stat. 269, chapter 340), is
 9 amended—

10 (A) by striking paragraph (6) of subsection
 11 (h) and inserting the following:

12 “(6) To enhance fisheries habitat or to improve
 13 water conservation management of the project.”;
 14 and

15 (B) by adding at the end the following:

16 “(k) MISSION VALLEY DIVISION.—

17 “(1) IN GENERAL.—The Secretary of the Inte-
 18 rior (referred to in this section as the ‘Secretary’),
 19 or the Tribes (as defined in section 3 of the Salish
 20 and Kootenai Water Rights Settlement Act of 2016)
 21 acting on behalf of the Secretary, as the entity with
 22 the legal authority and responsibility to operate the
 23 Mission Valley division of the project (referred to in
 24 this subsection as the ‘project operator’), may allo-
 25 cate revenues derived from the Mission Valley divi-

1 sion in accordance with paragraph (2) for the pur-
2 poses described in subsection (h)(6).

3 “(2) ALLOCATION.—

4 “(A) IN GENERAL.—Subject to subpara-
5 graphs (B) and (C), the revenues described in
6 paragraph (1) shall be allocated by providing
7 \$100,000 to the Tribes and \$100,000 to the
8 project operator.

9 “(B) NEGOTIATION.—After the period of
10 10 fiscal years following the date of enactment
11 of the Salish and Kootenai Water Rights Settle-
12 ment Act of 2016, the Tribes, the State of
13 Montana, and the Secretary may negotiate for
14 an appropriate allocation that differs from the
15 allocation described in subparagraph (A).

16 “(C) CARRYOVER.—If the project operator
17 does not use the full allocation of the project
18 operator under this paragraph for a fiscal year,
19 an amount equal to the difference between that
20 full allocation and the amount used by the
21 project operator shall be set aside and accumu-
22 lated for expenditure in subsequent fiscal years
23 for the purposes described in subsection
24 (h)(6).”.

1 (3) INDIAN SELF-DETERMINATION AND EDU-
2 CATION ASSISTANCE ACT.—Section 403(b)(4) of the
3 Indian Self-Determination and Education Assistance
4 Act (25 U.S.C. 458cc(b)(4)) is amended—

5 (A) in subparagraph (A), by adding at the
6 end the following: “and”;

7 (B) in subparagraph (B), by striking
8 “and” at the end; and

9 (C) by striking subparagraph (C).

10 (b) WAIVER OF SOVEREIGN IMMUNITY.—Except as
11 provided in subsections (a) through (c) of section 208 of
12 the Department of Justice Appropriation Act, 1953 (43
13 U.S.C. 666), nothing in this Act waives the sovereign im-
14 munity of the United States.

15 (c) OTHER TRIBES NOT ADVERSELY AFFECTED.—
16 Nothing in this Act quantifies or diminishes any land or
17 water right, or any claim or entitlement to land or water,
18 of an Indian tribe other than the Tribes.

19 (d) LIMITATION ON CLAIMS FOR REIMBURSE-
20 MENT.—With respect to Indian land located within the
21 Reservation—

22 (1) the United States shall not submit against
23 the Indian land any claim for reimbursement of the
24 cost to the United States of carrying out this Act or
25 the Compact; and

1 (2) no assessment of the Indian land shall be
2 made regarding that cost.

3 (e) LIMITATION ON LIABILITY OF THE UNITED
4 STATES.—

5 (1) IN GENERAL.—The United States shall
6 have no obligation—

7 (A) to monitor, administer, or account for,
8 in any manner, any funds provided to the
9 Tribes by the State; or

10 (B) to review or approve any expenditure
11 of those funds.

12 (2) INDEMNITY.—The Tribes shall indemnify
13 the United States, and hold the United States harm-
14 less, with respect to all claims (including claims for
15 takings or breach of trust) arising from the receipt
16 or expenditure of amounts to carry out this Act.

17 (f) ANTIDEFICIENCY.—The United States shall not
18 be liable for any failure to carry out any obligation or ac-
19 tivity under this Act (including any obligation or activity
20 under the Compact) if insufficient amounts are made
21 available to carry out this Act—

22 (1) by Congress expressly to carry out this Act;
23 or

24 (2) in the Reclamation Water Settlements Fund
25 established by section 10501(a) of the Omnibus

1 Public Land Management Act of 2009 (43 U.S.C.
2 407(a)).

3 (g) OFFSETS.—If insufficient amounts are made
4 available to carry out this Act for a fiscal year, the Sec-
5 retary may use to carry out this Act such amounts as are
6 necessary from other amounts available to the Secretary
7 for that fiscal year that are not otherwise obligated.

8 (h) FEDERAL ADVISORY COMMITTEE ACT.—The
9 Federal Advisory Committee Act (5 U.S.C. App.) shall not
10 apply to any activity or function carried out by the Sec-
11 retary under this Act.

12 **SEC. 15. EFFECT OF FAILURE TO MEET DEADLINE FOR EN-**
13 **FORCEABILITY DATE.**

14 If the Secretary fails to publish in the Federal Reg-
15 ister a statement of findings under section 12(b) by Janu-
16 ary 21, 2031—

17 (1) this Act is repealed effective January 22,
18 2031;

19 (2) any action taken by the Secretary under
20 this Act and any contract or agreement entered into
21 pursuant to this Act shall be void;

22 (3) any amounts made available under section
23 9(m) that remain unexpended shall revert imme-
24 diately to the general fund of the Treasury;

1 (4) any amounts made available under section
 2 10(f), together with any interest on those amounts,
 3 shall immediately revert to the general fund of the
 4 Treasury; and

5 (5) the United States shall be entitled to offset
 6 against any claims asserted by the Tribes against
 7 the United States relating to water rights—

8 (A) any amounts expended or withdrawn
 9 from the amounts made available to carry out
 10 this Act; and

11 (B) any amounts made available to carry
 12 out this Act from other authorized sources.

13 **SEC. 16. EFFECT.**

14 (a) ENVIRONMENTAL ENFORCEMENT ACTIONS.—
 15 Nothing in this Act affects any provision of law (including
 16 regulations) in effect on the day before the date of enact-
 17 ment of this Act with respect to preenforcement review
 18 of any Federal environmental enforcement action.

19 (b) RECLAMATION LAWS.—The activities carried out
 20 by the Commissioner under this Act shall not establish
 21 a precedent or impact the authority provided under any
 22 other provision of the reclamation laws, including—

23 (1) the Reclamation Rural Water Supply Act of
 24 2006 (43 U.S.C. 2401 et seq.); and

1 (2) the Omnibus Public Land Management Act
2 of 2009 (Public Law 111–11; 123 Stat. 991).

3 (c) ALLOCATIONS AND APPORTIONMENTS.—Nothing
4 in this Act or the Compact—

5 (1) makes an allocation or apportionment of
6 water between or among States; or

7 (2) addresses or implies whether, how, or to
8 what extent the tribal water right, or any portion of
9 the tribal water right, should be accounted for as
10 part of, or otherwise charged against, an allocation
11 or apportionment of water made to a State in an
12 interstate allocation or apportionment.

13 (d) ACTIONS BY ALLOTTEES.—Except as otherwise
14 expressly provided in this Act, nothing in this Act—

15 (1) authorizes any action by an allottee against
16 any individual or entity, or against the Tribes, under
17 Federal, State, tribal, or local law; or

18 (2) alters or affects the status of any action
19 brought pursuant to section 1491(a) of title 28,
20 United States Code.

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